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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,002	01/28/2004	Robert Breslow	66873-010001	5023

7590 03/04/2005

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/767,002

Applicant(s)

BRESLOW ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/28/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6 and 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by either N.Y. Times (7/20/88, col. 4, p.4). or Boston Globe (7/7/82).

Claims 2, 3, 7-9, 15 and 17-19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by N.Y. Times (7/20/88, col. 4, p. 4).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5, 10, 11, 14, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over N.Y. Times (7/20/88, col. 4, p.4) in view of Womans Day Encyclopedia of Cookery (vol. 6, pp. 924, 925, 1966).

N.Y. Times teaches it is notoriously old to provide a frozen additive such as frozen liquid coffee which is capable of use with a heated beverage such as coffee to cool the coffee without diluting it. This is precisely applicants disclosed problem and solution. Claims 4 differs from N.Y. Times only in the particular liquid coffee that has been frozen. That is, claim 4 recites that the frozen coffee additive is espresso. Once it was known to provide a frozen liquid additive which is to be used to cool beverages, the particular liquid beverage selected and, in particular, the particular conventional

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liquid coffee beverage selected to be frozen, is seen to have been an obvious matter of choice and an obvious function of personal preference, i.e., taste. Note e.g. Woman's Day Encyclopedia of Cookery teaches a frozen additive comprising double strength coffee. Espresso, of course, is a well known, strong coffee. Similarly, and in view of the art taken as a whole, the degree of strength and/or caffeine is seen to have been an obvious matter of choice and an obvious function personal taste/preference. It is noted that claims 11-14 refer to a third concentration in claim 6 (i.e. 'said third concentration'), but claim 6 does not recite a "third concentration."

Claims 12 and 13 are 35 U.S.C. 103(a) as being unpatentable over N.Y. Times (7/20/88) or Boston Globe (7/7/82), both further in view of Lemke (DE 19847934, 4/20/200) and Kim (KR 2002 076221, 10/9/02).

Claims 12 and 13 differ from the N.Y. Times in the addition of vitamin C and zinc. As evidenced by the combination of Lemke and Kim, it is conventional to add nutrients such as vitamins to ice cubes including water based ice cubes or beverage based ice cubes to impart the nutrient value to the consumer. To modify N.Y. Times or Boston Globe and add nutrients for their well known and applicants intended function is therefore seen to have been obvious. The particular conventional nutrients selected, such as vitamin C and Zinc, are ^s ^b seen to have ~~been~~ ^{been} an obvious matter of choice and an obvious function of the particular nutrient one chooses to supplement.

The remainder of the references cited on the USPTO 892 form are cited as pertinent art. Note that the art is replete with examples of providing frozen liquid additives for beverages wherein the liquid additive either corresponds to the beverage

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to be cooled or is compatible with the beverage for flavoring so that in either case, the beverage is not diluted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 6:30am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein/af
February 25, 2005

Steven Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761